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ABSTRACT

Presented by the President's Committee on Mental Retardation are an analysis of architectural barriers and a summary of new state cases, updated information on previously reported cases, and a listing of cases all concerned with the legal rights of the retarded. Architectural barriers are considered in terms of statutory actions and constitutional theories that have been used to challenge such barriers. New cases are reviewed for the following issues: architectural barriers, right to treatment, right to just compensation for labor, right to education, exclusionary zoning, sterilization, and right to control money. Updated information is provided on previously reported cases concerned with right to treatment, right to just compensation for labor, right to education, right to fair classification, exclusionary zoning, sterilization, and commitment laws. The final section lists closed cases in the following areas: right to treatment, right to just compensation for labor, right to public education, custody, commitment laws, and exclusionary zoning. (DB)

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MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

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July 1974

This issue of "Mental Retardation and the Law" features a discussion of two recent cases involving challenges to architectural barriers.

Altogether this issue contains reports on twelve new cases and updated information on thirty-four cases reported in previous issues. Important among the updated cases is *Donaldson v. O'Connor* in which for the first time the constitutional right to treatment of an involuntarily confined patient was upheld by a United States Court of Appeals. This case will be analyzed in more detail in the next issue.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
President's Committee on Mental Retardation
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I. FEATURE

ARCHITECTURAL BARRIERS

This issue of "Mental Retardation and the Law," focuses on cases challenging the constitutionality of public policies permitting the construction of public facilities which are inaccessible to persons with physical handicaps. This analysis will concentrate on statutory and constitutional theories that have been used to challenge such "architectural barriers." Following this analysis, two cases will be summarized which were successful in having such barriers removed. One of the cases involved public buildings in Cuyahoga County, Ohio and the other involved the subway system that is presently under construction in Washington, D.C.

Persons concerned about the legal rights of the mentally retarded have recently joined the broader group concerned with the physically handicapped in an effort to remove architectural barriers affecting their mutual constituencies. In a study conducted in Edinburgh, Scotland, it was found that

> [a]lmost 95% of those with I.Q.'s below 30 and almost 78% of those with I.Q.'s between 30 and 55 suffered from at least one major physically handicapping condition. Among the mildly retarded, this percentage declined markedly to 37%. Conley, *The Economics of Mental Retardation*, p. 47.

From this and other studies, the authors of *Economics of Mental Retardation* conclude that over 30% of all retarded children suffer from additional physical handicaps and that this figure increases with age and greater severity of retardation.

In addition to usual physical handicaps, mentally retarded persons have other special handicaps which architects must be aware of. For example, mass transit systems may be unusable to a retarded person who cannot read or count the change necessary to pay the fare. The challenge to architects who design such systems is to minimize to the greatest extent practical all barriers to the use of such systems by the retarded.

Statutory Actions

In recent years legislatures have passed a number of laws to help eliminate architectural barriers. Title 42, United States Code, Sections 4151-5156 provides that any building which is built by the Federal Government for its own use or which is financed in whole or in part by Federal funds (except for private residences) must meet Federal standards to insure that it is accessible to persons who are physically handicapped.

Many states have also passed legislation to eliminate architectural barriers in public buildings. As of August 1973, every state except Kentucky had some existing legislation regarding architectural barriers. "Survey of State Laws To Remove Barriers," President's Committee on Employment of the Handicapped. (Available from PCEH, 1111 - 20th Street, N.W., Washington, D. C. 20036)

Constitutional Theories

In addition to suits stemming directly from state and Federal statutory provisions, advocates attacking architectural barriers on behalf of the retarded have raised a number of constitutional theories.

First, public policies which permit architectural barriers may violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Where the Government undertakes to carry out public functions, it may not unreasonably discriminate against one group of persons in society, *i.e.*, physically handicapped. At a minimum, there must be a rational basis for differential treatment, and if differential treatment is afforded to a "suspect classification" then the burden on the government is not only to show that there is a rational basis for the differential treatment but that there is a compelling state interest to justify it.

A variant of the Equal Protection argument is that physically handicapped persons are denied Equal Employment Opportunity in that they are denied government jobs if public buildings are physically inaccessible to them. This argument applies, for example, to physically handicapped lawyers who are unable to enter courthouses.

Other theories are that architectural barriers preventing physically handicapped persons from using public transportation violate their First Amendment Right To Travel; that physically handicapped persons' First Amendment Right To Petition The Government is denied when government officials are inaccessbile because of architectural barriers in public buildings; and that physically handicapped persons are denied equal access to the courts when they cannot enter the courthouse because of architectural barriers.

Plaintiffs in architectural barriers cases generally seek orders requiring that architectural barriers be removed from existing buildings and that future buildings be designed in a "barrier free" manner. In one of the two cases reported below, the plaintiff obtained a consent decree providing for the removal of architectural barriers. In the other case, a Washington, D.C. District Judge enjoined the local transit authority from operating their new subway system until it was made accessible to physically handicapped persons.

II. NEW CASES

A. ARCHITECTURAL BARRIERS

WASHINGTON D.C.: *Urban League* v. *WMATA*, Civil No. 776-72 (United States District Court for the District of Columbia) Filed April 14, 1972. Decided October 9, 1973.

The plaintiffs in this class action suit were the Washington Urban League, the Paralyzed Veterans of America, the National Paraplegic Foundation, and others.

The Defendant was the Washington Area Metropolitan Transit Authority (WMATA) which is in the process of constructing a subway system for the Washington, D.C. Metropolitan area.

The plaintiffs claimed that Metro was constructing the subway system without taking into account the needs of physically handicapped citizens who might want to use the system. In particular, the plaintiffs were concerned that there would not be elevators to the subway station for use by people who could not use stairs because they were confined to wheelchairs due to physical handicaps. Plaintiffs based their legal claims on 42 USC 4151 (as amended by PL 91-205) which requires that any public facility built with Federal funds (including the subway) must be accessible to persons who are physically handicapped. In addition,

plaintiffs asserted some of the constitutional theories discussed in the feature article *(supra, p. 2)*.

Defendants interposed three defenses:

—PL 91-205 (which amended 42 USC § 4151 to include WMATA as one of those agencies required to eliminate architectural barriers) was only an authorization to spend money and therefore WMATA has no obligation to spend money on such things as elevators unless Congress appropriates money for those items.

—Under various "Anti-Deficiency" provisions of the United States Code, it would be unlawful for WMATA to either exceed its budget or divert funds from other parts of the budget to meet the plaintiffs' demands.

—The funding arrangement of WMATA was so delicate that it could not have been Congress's intent to alter it without providing additional funds to do so.

The plaintiffs sought the following relief:

1. A declaratory judgement that WMATA was in violation of 42 USC § 4151;

2. A preliminary injunction to prevent further construction which would make the installation of elevators more difficult; and to prevent expenditure of funds for the design or construction of further stations until provisions were made for handicapped persons in currently constructed stations;

3. A permanent injunction preventing the defendant from constructing any further stations until the Court was assured of WMATA's compliance with the law and its agreement to install elevator systems.

The motion for a preliminary injunction was denied, but on October 8, 1972, the District Court entered an order declaring that 42 USC § 4151 applied to the facts of this case. Rather than granting immediate relief the Court retained jurisdiction until October 8, 1973, at which time WMATA was to report back to the Court as to what steps had been taken to comply with the law.

On June 29, 1973, the Court entered an order granting partial summary judgement declaring that defendants were under a legal obligation to design the subway system for use by physically handicapped persons. A mandatory injunction was handed down on Oct. 9, 1973, enjoining WMATA from commercially operating the subway system until it was made accessible to physically handicapped persons.

OHIO: *Friedman v. County of Cuyahoga*, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio) Consent decree entered November 15, 1972.

Plaintiffs in this class action which challenged the constitutionality of architectural barriers to the physically handicapped in public buildings were Jeffery Friedman, a law student (now a lawyer) in Cleveland, Ohio, and the class of all physically handicapped persons in Cuyahoga County.

The defendants were officials of Cuyahoga County Ohio.

The suit was brought after Friedman tried unsuccessfully to enter various county buildings, including the County Administrative building and the County Courthouse. Friedman, confined to a wheelchair due to an automobile accident, was unable to enter most of these buildings because they were designed in such a way as to be inaccessible to persons in wheelchairs.

In his complaint, Friedman relied upon Article 1, Sect. 16 of the Ohio Constitution and also asserted several of the Federal Constitutional theories outlined at pp. 1 - 2 above.

Plaintiffs sought an injunction ordering the defendants to alter the buildings to make them accessible to physically handicapped persons.

On November 15, 1972, Judge John T. Patton entered a consent decree, whereby defendants agreed to install ramps, a bell or signalling device, or other appropriate means to assure ingress and egress by physically handicapped persons to certain public buildings.

B. RIGHT TO TREATMENT

WASHINGTON, D.C.: *Robinson v. Weinberger*, No. CA 74-285, (United States District Court for the District of Columbia) filed Feb. 14, 1974.

Plaintiffs in this class action include a class of persons confined to St. Elizabeths Hospital in the District of Columbia who "now, or may in the future, need placement in the least restrictive setting, consistent with suitable care and treatment. . .," and four prestigious organizations of mental health professionals—The American Orthopsychiatric Association, American Psychiatric Association, American Psychology Association and the American Public Health Association.

Defendants are the Federal and District of Columbia officials who are responsibile for operating St. Elizabeths Hospital in the District.

The plaintiffs allege in their complaint that the defendants have a duty under the 1964 Hospitalization of the Mentally Ill Act and the First, Fifth and Eighth Amendments to the U.S. Constitution, to "return the mentally ill [and retarded] to a full, productive and autonomous life in the community as soon as possible." To this end, they have a duty to place these persons in the "least restrictive settings or institutions consistent with the plaintiffs' treatment needs." If these settings do not already exist, defendants have a duty to create these settings and further to upgrade the existing facilities to insure that they benefit and not harm the plaintiffs.

The plaintiffs further allege that all of the named plaintiffs and the members of the class should no longer be confined to St. Elizabeths Hospital but cannot be placed in alternative settings because those settings do not exist in sufficient numbers to meet the requirements of those who need them.

Plaintiffs have sought the following relief:

—A declaration that the defendants are in violation of the 1964 Hospitalization

of the Mentally Ill Act and the United States Constitution because of their failure to provide treatment in less restrictive settings than St. Elizabeths Hospital;

—An order enjoining the defendants from violating their duty to provide treatment in less restrictive settings and requiring the defendants to submit to the court a plan to provide such treatment; and attorneys fees and costs.

The defendants have not yet filed any responsive pleadings.

MARYLAND: *United States v. Solomon*, No. N-74-181 (United States District Court, Maryland) filed February 21, 1974.

Plaintiff in this right to treatment suit is the United States of America, represented by the Department of Justice, Civil Rights Division, Office of Institutions and Facilities.

Defendants are the officials who operate Rosewood State Hospital in Maryland and officials of the Department of Health and Mental Hygiene of Maryland.

Plaintiffs allege that the defendants have violated the Eighth, Thirteenth, and Fourteenth Amendment rights of Rosewood State Hospital residents by failing to provide care and treatment for the residents; failing to protect the residents from physical harm; failing to provide adequate compensation for non-therapeutic work not related to personal hygiene or housekeeping; and retaining certain residents in the institution solely because of their willingness or ability to perform such work.

Plaintiff seeks an order enjoining the defendants from continuing to violate the residents' constitutional rights.

This is the first instance in which the U.S. Department of Justice has itself initiated (rather than participated in as friend of the court) a class action suit on behalf of the mentally retarded.

PENNSYLVANIA: *Janet D. v. Carros*, No. 1079-73 (Court of Common Pleas, Allegheny County, Pennsylvania, Family Division, Juvenile Section) filed June 26, 1973. Decided March 29, 1974.

Plaintiff in this "Petition for rule to show cause why respondent should not be held in contempt" is Janet D. a mentally retarded, emotionally disturbed, deprived child.

The respondent is the Director of Child Welfare Services for Allegheny County.

Plaintiff had been committed by the Juvenile Court to the Child Welfare Services after she had run away from a number of foster homes. On June 15, 1973, the Juvenile Court had entered an order requiring, among other things, that the Child Welfare Services "make suitable arrangements to see that said child does not

run away subsequent to her placement in the shelter facility to be provided by C[hild] W[elfare] S[ervices]." Subsequent to the entering of this order, Janet had run away three times and on one occasion had been "jumped" by four boys in an attack that had "sexual overtones."

In his opinion, the Juvenile Judge commented that he was "adversely impressed by the CWS administration's general lack of humane concern for children, evidenced by a slavish adherence to rigid bureaucratic channels and a division of work assignments which is perhaps fitting for the Defense Department, but certainly not appropriate for an agency established to help deprived children with individualized problems and needs."

In finding the Director of the Child Welfare Services in contempt of the Court, he held, *inter alia:*

—That the failure of the Director to properly supervise lower echelon employees in carrying out the court order constituted a contempt of court.

That neither "good intentions nor poor judgement" are defenses to citations for civil contempt.

The court concluded that it "cannot and will not condone any placement of shelter situation which continually exposes a child to harm regardless of the purity of intentions of those administering the Agency. The Court found the Director in contempt of the court and fined him $100. It also ruled that the plaintiff could file a claim for damage if they could be quantified.

C. RIGHT TO JUST COMPENSATION FOR LABOR

IOWA: *Brennan v. State of Iowa*, No. 73-1500 (United States Court of Appeals, Eighth Circuit) decided February 26, 1973.

Plaintiff in this suit to enforce the Fair Labor Standards Act was the Secretary of Labor.

The Defendant was the State of Iowa as owner of various mental and penal institutions.

The Eighth Circuit ruled that employees in these institutions are "engaged in commerce" and therefore are covered by the Fair Labor Standards Act. The rationale for finding that the employees are engaged in commerce is that (1) regular activities of the employees are interstate in nature (such as sending invoices out of state, making interstate telephone calls, accompanying patients out of state for treatment or diagnosis, etc.); and (2) that the employees physically possess goods that are in interstate commerce.

The court ruled further that the assessment of back wages would be an appropriate remedy in such a case, even though the defendant is a State.

Under the decision by the United States District Court for the District of Columbia in *Souder v. Brennan* (see "Mental Retardation and the Law," January 1974, p.9)

patient workers in these mental and penal institutions are among the employees covered by this decision.

D. RIGHT TO EDUCATION.

WEST VIRGINIA: *Doe v. Jones*, (Hearing before the State Superintendent of Schools), decided January 4, 1974.

Petitioners in this class action lawsuit were minor residents of Spencer State Hospital in Roane County, West Virginia.

The respondents were the Board of Education and Superintendent of Schools of Roane County, West Virginia.

The petitioners claimed that the respondents had denied them the right to attend the public schools of Roane County in violation of State law and the Fourteenth Amendment to the United States Constitution. The petitioners had agreed that they would permit the director of Spencer State Hospital to certify which of the children at the hospital would be able to benefit from public school education and abide by that certification.

The State Superintendent ruled that under West Virginia statutory law, the School Board must admit all students residing in the school district to district schools regardless of the students' domicile for other purposes. He further ruled that students may only be excluded for conduct specified by statute (i.e. disorderly, refractory, indecent or immoral conduct) but that before exclusion for these reasons is permitted, the students must be afforded a due process hearing on the exclusion.

The State Superintendent ordered the School Board to admit to the county schools those students certified by the director of the Spencer State Hospital.

WISCONSIN: *State of Wisconsin ex rel. Warren v. Nusbaum*, State No. 2 (Wisconsin Supreme Court) filed March 1, 1974.

This is a lawsuit testing the constitutionality of Wis. Stat. § 115.82(d), which provides for State tuition grants to parents of handicapped children to send the children to private schools if no public school spaces are available. The suit was authorized by Sec. 22 of Chapter 89 of the Laws of 1973 to test the constitutionality of this provision.

The plaintiff is the Attorney General of the State of Wisconsin.

The Defendant is the Secretary of the State Department of Admininstration.

The plaintiffs in *Panitch v. State of Wisconsin* (See p. 20 *infra*) have intervened as a party plaintiff.

Both sides stipulated to the facts of the case. The sole question being argued is whether § 115.82(d) violates the First Amendment to the United States Constitution and Article I, sec. 18 of the Wisconsin Constitution.

Plaintiff takes the position that since the primary purpose of the statute is secular, there is no violation of the First Amendment. Defendant has responded that despite the fact that the primary purpose is secular, the legislative scheme represents an impermissible entanglement of the State in religion since the funds paid under the statute could go directly to religious schools. Intervenors assert that not only are the tuition grants permissible, they are required under the Fourteenth Amendment to the United States Constitution.

The case is set for oral argument before the Wisconsin Supreme Court in June of 1974.

E. EXCLUSIONARY ZONING

NEW YORK: *Village of Belle Terre v. Borass*, 94 S. Ct. 1536 (1974).

While this case does not involve the mentally retarded per se, its impact on the question of exclusionary zoning (see "Mental Retardation and the Law," July 1973) is significant.

Appellant in this case was the Village of Belle Terre, New York.

Appellees were three unmarried college students and their landlord.

Under the zoning ordinance in Belle Terre, certain areas were restricted to one-family dwellings. "Family" was defined as "One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons, but not exceeding two (2) living and cooking together as a single housekeeping unit, though not related by blood, adoption or marriage shall be deemed to constitute a family."

Appellee students had leased a house in a one-family zone. When the Village sought to evict them they brought this suit to have the definition of family declared unconstitutional. The District Court and Second Circuit Court of Appeals held that the definition violated the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court, per Justice Douglas (6-3), reversed.

The majority opinion held that such a restriction was a valid exercise of the police power and let the provision stand. Justice Marshall, dissenting, objected that the provision in question discriminated on the basis of lifestyle, a fundamental personal right, and therefore that state should have to show a substantial and compelling interest.

F. STERILIZATION

CALIFORNIA: *Holly Diane Kemp v. Joseph Kemp (Guardian)*, 1/Civil 33721 (Court of Appeal, State of California) filed March 29, 1972.

Respondent/Appellant is a 32 year old black woman who is alleged to be mildly mentally retarded.

Petitioner/Appellee is her father, who sought to have himself appointed guardian of her person.

The appellant alleges that the "sole purpose" of the petition for guardianship was to "obtain an order of the probate court authorizing her sterilization." The reasons that the doctor and the guardian gave for seeking the sterilization were (1) that she "might engage in sexual intercourse;" and that she was "deficient" and "might have a deficient child."

A hearing was held on September 8, 1972 at which Mr. Kemp, the father, testified, and various medical reports were admitted into evidence. No evidence was presented on behalf of appellant, nor were expert witnesses—or any witnesses—called for appellant.

On December 26, 1972 the trial judge entered an order authorizing and directing the guardian to consent to sterilization of appellant on the grounds that: her health would be impaired if she became pregnant; use of an intrauterine device was medically contraindicated; and use of birth control pills had "adversely affected the health of the appellant."

The public defender, who represented appellant at the hearing, filed a notice of appeal and the ACLU of Northern California is prosecuting the appeal.

As grounds for appeal, the appellant asserts that the Probate Court was without authority to authorize or direct the guardian to consent to the sterilization of the appellant, since its order went beyond the scope of the equitable powers granted to that court and ordered that the powers of the guardian be exercised for reasons other than the "best interests" of the ward; that the decree of the Probate Court is state action in violation of rights guaranteed to the appellant by the United States and California constitutions, since, among other factors, the sterilization violates the appellant's right to privacy without any compelling state interest; that the sterilization order deprives appellant of equal protection of the laws because she was denied those procedural safeguards which are provided, by statute, to those in institutions who may be sterilized.

Appellees have not yet filed their reply brief.

WASHINGTON, D.C.: *National Welfare Rights Organization v. Weinberger*, No. 74-243 (United States District Court for the District of Columbia) filed February 6, 1974. Consolidated with *Relf v. Weinberger*, No. 73-1557 (United States District Court for the District of Columbia) reinstated October 8, 1973.

In this suit the National Welfare Rights Organization is challenging the validity of the Proposed DHEW regulations governing sterilization.

Defendants are officials of the Department of Health, Education, and Welfare who are responsible for administering family planning programs funded by the Federal Government.

This case was consolidated with *Relf v. Weinberger* (see "Mental Retardation and the Law," October, 1973, and January, 1974) since part of *Relf* challenges the validity of the same DHEW Regulations.

The Regulations challenged in this case were published in the Federal Register on September 21, 1973, and promulgated on Feb. 6, 1974. (For the text of the Proposed Regulations, see "Mental Retardation and the Law," October, 1973, pp. 5-8.) Following their promulgation, this lawsuit was filed challenging their validity under the United States Constitution and certain Federal Statutes.

According to plaintiffs, the challenged Regulations violate the right to privacy guaranteed to juveniles and persons alleged to be mentally incompetent. This right is guaranteed by the First, Fourth, Fifth and Ninth Amendments to the United States Constitution. Specifically these Regulations violate the right to privacy of juveniles and incompetents in that they

—sanction the use of Federal funds to pay for irreversible sterilization even where there is no "therapeutic purpose."

—sanction irreversible sterilization over the object of parents or guardians.

—sanction involuntary sterilizations for "therapeutic purposes" without any safeguards to insure that there is a need for the operation.

—sanction "irreversible non-therapeutic sterilization" without adequate substantive standards and procedural safeguards to insure that the actions of the "Review Committee" in approving such sterilizations do not violate the right to privacy of the juveniles or alleged mentally incompetent persons.

Plaintiffs further allege that the Regulations sanction sterilization of adults who are dependant on welfare funds without any procedures to insure that their "consent" to sterilization is "voluntary, informed, and competent."

Plaintiffs finally allege that the Regulations authorize procedures and practices which are beyond the statutory authority of the defendants to authorize and therefore constitute "arbitrary and unlawful action by the defendants."

The relief sought by plaintiffs included:

a temporary restraining order preventing the use of Federal funds for sterilization except in cases of medical necessity;

a preliminary injunction; and

permanent relief in the form of a declaration that the Regulations are unconstitutional; and an injunction against implementing the Regulations or, alternatively, an order directing the defendants to promulgate new Regulations.

After the *NWRO v. Weinberger* case and *Relf v. Weinberger* were joined, the Secretary of Health, Education, and Welfare agreed to delay implementation of the

challenged Regulations until March 18, 1973, in order to permit a resolution of the legal issues raised by the two sets of plaintiffs.

Defendant's motion for dismissal and all parties' motions for summary judgement were argued before Judge Gesell of the United States District Court for the District of Columbia.

Judge Gesell entered his opinion and order on March 15, 1973. The judge avoided deciding the constitutional issues because he determined that the Secretary of Health, Education, and Welfare lacked statutory authorization to provide Federal funds for the "sterilization of any person incompetent under state law to consent to such an operation, whether because of minority or mental deficiency." Accordingly, he enjoined the defendants from providing Federal funds for the sterilization of persons who have been "judicially declared mentally incompetent," or who are "in fact legally incompetent under the applicable state laws to give informed and binding consent to the performance of such an operation because of age or mental capacity.

Judge Gesell also found that the consent procedures provided for in the Regulations were deficient in that they did not adequately advise persons that benefits under Federal programs (principally Medicaid) could not be withheld or withdrawn because of failure to consent to sterilization. He ordered that such advice must "appear prominently at the top of the consent document."

Thus far no appeal has been taken by the government.

NORTH CAROLINA: *Elaine Trent v. David Wright, M.D.*, (United States District Court, Eastern District, North Carolina) filed January 18, 1974.

Plaintiff is a young black woman who was irreversibly sterilized at age 14. She claims to represent a class of persons who have been or might be subjected to this same procedure.

Defendants include the doctor who performed the operation and certain social service personnel and members of the State Eugenics Board who either recommended or authorized the operation.

Plaintiff's factual allegations are briefly as follows:

> When she was 14 years old, she gave birth to an illegitimate child. While she was in the hospital, she was sterilized after the doctors had obtained written consent from her illiterate grandmother.
>
> Her grandmother did not understand what was on the form and was told by the doctors that the procedure would only be temporary. The defendant Eugenics Board authorized the sterilization without holding a hearing to determine whether or not plaintiff was "mentally diseased or feebleminded" (the standard for involuntary sterilization under North Carolina law), which she was not. Plaintiff believes that the Eugenics Board has increasingly relied

on third-party consent to the operation of sterilization in order to avoid the hearing procedures required by the Sterilization Statute.

She further believes the Eugenics Board's determination was based on factors of race, sex, poverty and her status as an unwed mother.

The sterilization operation has resulted in physical disabilities and her husband has said he plans to leave her based largely on her inability to bear him any children.

In her complaint, plaintiff sets out a number of legal rights which she believes the North Carolina Sterilization Statute and the actions of the defendants have violated. The North Carolina Sterilization Statute violates the First, Fourth, Fifth, Eighth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution in that;

a. the Statute is an arbitrary exercise of state power;

b. the Statute lacks adequate procedural safeguards;

c. the grounds for sterilization are "impermissible vague;"

d. the Statute denies an 18 year old notice and an opportunity to be heard on a matter of "vital importance to her life and liberty;"

e. the Statute violates the right to privacy;"

f. the application of the Statute "invidiously discriminates" against persons on account of race, poverty, sex, and status of unwed parenthood;

g. the Statute inflicts cruel and unusual punishment;

h. the Statute punishes women who bear children out of wedlock.

The defendants have violated the provisions of the North Carolina Sterilization Statutes in the method by which they ordered sterilization; and , the defendants' conduct amounts to medical malpractice.

Plaintiff seeks the following relief:

1. A declaration that the sterilization Statute is in violation of the United States Constitution;

2. Nullification of the Eugenics Board's determination that the plaintiff was "mentally defective";

3. An order to expunge reference to the "mentally defective" condition of the plaintiff from all records;

4. Monetary damages; and

5. Costs and attorneys fees.

To date no answer or other responsive pleading has been received from the defendants.

G. RIGHT TO CONTROL MONEY

CONNECTICUT: *Albrecht v. Carlson*, No. H-263 (United States District Court for the District of Connecticut) Filed December 13, 1973.

Plaintiffs in this class action are two elderly mentally retarded women who were involuntarily committed to mental institutions for 41 years; and a class of "all persons presently or formerly residing in any state institution for the mentally retarded in Connecticut and whose assets or annual income does not exceed. . . $5000."

The defendant is the Commissioner of the Department of Finance and Control for the State of Connecticut.

Section 4-68g of the Connecticut General Statutes provides for the appointment of the Commissioner as conservator of the assets for all persons confined in state institutions for the mentally ill or retarded whose assets or income does not exceed $5000. No notice or hearing is required before the conservator is appointed in this capacity. He is authorized to collect funds of the residents and disburse them if he determines it is proper to do so (although under other statutes, hearings are required before conservators are appointed).

In their complaint, the named plaintiffs allege that the defendant disallowed the payment of $320.95 for the purchase of a color television set because the payment "would not be in the best interest of the State of Connecticut," even though the plaintiffs were no longer living in the institution and their social worker and the family with whom they were living felt that the purchase was justified.

The plaintiffs seek to have Section 4-68(g) of the General Statutes declared unconstitutional on the following grounds:

> The procedure provided permits plaintiffs to be declared incompetent without notice and a proper judical hearing in violation of the Due Process clause of the Fourteenth Amendment to the U.S. Constitution, and the procedure creates a statutory conflict of interest for the conservator since he must act in the interest of both the plaintiffs and the state of Connecticut. This conflict violates the Fourteenth Amendment to the United States Constitution;
>
> The procedure discriminatorily applies to only those mentally ill or retarded persons who are confined to state institutions, in violation of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, and the statute creates a "permanent, irrebuttable presumption that plaintiffs and all persons similarly situated are incompetent to handle their own affairs" in violation of the Due Process and Equal Protection clauses of the United States Constitution.

The relief sought by plaintiffs in this suit includes:

—a declaration that the challenged statutory provision is unconstitutional;

—an injunction prohibiting the defendant from enforcing the statute; and

—an order directing the defendant to return to the plaintiff class all property which has been placed in trustee accounts for them.

No answer has yet been filed.

III. UPDATED INFORMATION ON PREVIOUSLY REPORTED CASES

A. RIGHT TO TREATMENT

ALABAMA: *Wyatt v. Stickney*, 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373 and 387 (M.D. Alabama, 1972) Appeal filed May 12, 1972. Civil Action No. 72-2634 (5th Circuit).

No further developments since the April 1973 issue of "Mental Retardation and the Law."

CALIFORNIA: *Joseph R. Revels v. Earl Brian, M.D.*, No. 658-044 (Superior Court of the State of California, City and County of San Francisco) filed March 22, 1973.

No further developments since the January 1974 issue of "Mental Retardation and the Law."

GEORGIA: *Burnham v. Department of Public Health of the State of Georgia*, 349 F. Supp. 1335 (N.D. Georgia, August 3, 1972) appeal filed August, 1973, Civil Action No. 72-3110 (5th Circuit).

No further developments since the April 1973 issue of "Mental Retardation and the Law."

FLORIDA: *Donaldson v. O'Conner*, 493 F. 2d 507 (5 Cir. 1974).

On April 26, 1974, the United States Court of Appeals for the Fifth Circuit held that a non-dangerous person who is involuntarily committed to a state mental hospital has a *constitutional right*, based on the 14th Amendment, to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition. In so holding, the Fifth Circuit upheld that Florida District Court's award of damages to the plaintiff, a former mental patient, who had claimed that in 14½ years of involuntary confinement he had received no treatment, while at the same time his legitimate attempts to seek release had been blocked.

This very important case will receive more complete analysis in the next issue of "Mental Retardation and the Law."

ILLINOIS: *Wheeler v. Glass*, Civil Action No. 71-1677 (United States District Court, Illinois) filed November 13, 1970.

No further developments since the January, 1974 issue of "Mental Retardation and the Law."

MINNESOTA: *Welsch v. Likins*, 373 F. Supp. 487 (D. Minn. 1974)

On February 15, 1974, District Judge Earl Larsen issued a Decree and 23 page legal memorandum which affirmed a constitutional due process right to habilitation for persons who are involuntarily committed to state facilities for the mentally retarded. The Court also found a statutory right to habilitation under the Minnesota Hospitalization and Commitment Act.

In addition, the Court held that civilly committed residents have a due process right to be treated in less restrictive community based alternatives to institutionalization.

The Court agreed with plaintiffs' contention that mentally retarded persons confined in state institutions have a right under the Eighth Amendment or due process clause of the Fourteenth Amendment to a humane and safe living environment including the right to protection from assaults, reasonable access to exercise, and outdoor activities and basic hygienic needs.

Finally, the Court noted the possibility of Eighth and Fourteenth Amendment violations arising from the excessive use of seclusion, physical restraint, and tranquilizers.

The Court has deferred rulings on relief pending a conference with counsel.

NEBRASKA: *Horacek v. Exon*, Civil Action No. CV72-L-299 (United States District Court, Nebraska) filed September 28, 1972.

The Department of Justice intervened as an *amicus curiae* (friend of the court) on behalf of the plaintiffs on April 26, 1974. One of the basis for their intervention is the fact that Beatrice State Home, which is the subject of the lawsuit, has received $3.4 million in Medicaid funds. Trial of the case is now set for July of 1974.

NEW YORK: *New York State Association for Retarded Children v. Rockefeller*; and *Patricia Parisi v. Rockefeller*, 72 Civil Action No. 356 (United States District Court, Eastern District, New York) filed March 17, 1973.

On April 22, 1974, the court denied defendant's motion to dismiss. It also denied plaintiff's motion to file an amended complaint. The United States has intervened as a friend of the court. Trial is now set for September 30, 1974.

TENNESSEE: *Saville v. Treadway*, Civil Action No. Nashville 6969, (United States District Court, Middle District, Tennessee) filed April 10, 1973.

In a very important decision highlighting potential conflicts of interest between parents and their mentally retarded children and illustrating that a "voluntary" admission by a parent may in reality be an involuntary admission for the child, the three-judge District Court entered an order on March 8, 1974, concerning that portion of the case challenging the constitutionality of the Tennessee commitment procedures.

It ruled that TCA §§ 33-501 (1) and (2), which permit the commitment of a person to a state mental hospital merely upon the request of a parent or guardian and the consent of the hospital superintendent, violate the Due Process clause of the United States Constitution because of the lack of procedural safeguards to protect the interest of the child.

The court enjoined the state from making futher commitments under the challenged statutory provisons. The remaining right to treatment claims (*see* "Mental Retardation and the Law," April, 1973) have been remanded to the single district judge for further proceedings.

B. RIGHT TO JUST COMPENSATION FOR LABOR

FLORIDA: *Roebuck v. Florida Department of Health and Rehabilitive Services*, Civil Action No. TCA 1041 (United States District Court, Northern District, Florida) filed July 6, 1972.

Plaintiffs are reviewing the lower court decision to determine whether or not to appeal. For previous decision, see "Mental Retardation and the Law," July, 1973.

TENNESSEE: *Townsend v. Clover Bottom* [formerly *Townsend v. Treadway*], No. A-2576 (Chancery Court, Nashville) filed May 22, 1972.

Following the Federal Court's dismissal of the Fair Labor Standards Act claim on May 15, 1973, the plaintiffs refiled that portion of their case in the Tennessee state Chancery Court. (*see* "Mental Retardation and the Law," October, 1973).

The State filed a motion to dismiss this new suit. primarily on grounds of sovereign immunity. Briefs were submitted by both sides and the chancellor took the matter under advisement.

On February 21, 1974, the chancellor ruled that while Federal Court actions against the state to enforce the Fair Labor Standards Act may be barred by the Eleventh Amendment, Congress "by the 1966 amendment, effectively lifted the states' immunity from private suit in the context of an FLSA action in a state forum." Therefore, the defendant's motion to dismiss was denied and plaintiffs will be allowed to proceed on the merits of the case.

WASHINGTON, D.C.: *Souder v. Brennan*, 367 F. Supp. 808 (D. D.C. 1973).

The Department of Labor is now implementing the Court's order (see "Mental Retardation and the Law," January, 1974).

C. RIGHT TO EDUCATION

CALIFORNIA: *California Association for Retarded Children v. State Board pf Education*, No. 237277 (Superior Court, Sacramento County) filed July 27, 1973.

Motions to dismiss and motions to strike portions of the pleadings were briefed and argued by the parties in December of 1973. There has been no ruling on these motions. Discovery is proceeding.

CALIFORNIA: *Lori Case v. State of California*, Civil Action 101679 (California Superior Court, Riverside County) filed January 7, 1972.

No further developments since the October 1973 issue of "Mental Retardation and the Law."

COLORADO: *Colorado Association for Retarded Children v. State of Colorado*, No. C-4620 (United States District Court, Colorado) filed December 22, 1972.

No further developments since the January 1974 issue of "Mental Retardation and the Law."

FLORIDA: *Florida Association for Retarded Children v. State Board of Education*, Civil Action No. 730 250-Civ.—NCR (United States District Court, Southern District of Florida) filed February 14, 1973. State Court Actions known as *State of Florida ex rel. Grace v. Dade County Board of Public Instruction; and State of Florida ex rel. Stein v. Keller.*

This class action is presently in the Florida state courts pursuant to an order of abstention entered by the United States District Court (see "Mental Retardation and the Law," January 1974.)

The *Grace* case, (based on Florida Statute 230.23 (4) (m) (2), which requires local school boards to provide special educational services within the district school system, in cooperation with other district school systems, or through contractual arrangements with private or non public school or community facilities) is moving toward a final conclusion. Counsel for both sides are presently working together to develop procedural guidelines for individulized hearings for each child who is denied placement or is placed inappropriately.

The *Stein* case, (based on Florida Statute 402.22(2), which requires the Department of Health and Rehabilitative Services to establish educational programs for all persons under its care younger than 21 yrs) is in the discovery stage. Plaintiffs took depositions in late April to try to establish that they are not receiving appropriate educational services.

FLORIDA: *Wilcox v. Carter*, Civil Action No. 73-41 (United States District Court, Middle District, Florida) filed January, 1973.

No further developments since the January 1974 issue of "Mental Retardation and the Law."

MARYLAND: *Maryland Association for Retarded Children, Leonard Bramble v. State of Maryland*, Civil Action. No. 720733-K (United States District Court, Maryland) In the Maryland State Court. Equity No. 77676 (Circuit Court for Baltimore County) filed February 14, 1973. State Court decision entered April 9, 1974

On April 9, 1974, the Maryland state trial court issued its decision in this right to education lawsuit. The case was litigated in the Maryland state court after the United States District Court for Maryland abstained (see "Mental Retardation and the Law," October 1973).

In his opinion, Judge Raine determined that the defendants had not violated any provisions of the Maryland State Constitution. Judge Raine did however, examine defendants' conduct under the requirement of various Maryland statutes, and entered a decree ordering the defendants to take certain steps to insure compliance with those statutes. (See below for specifics) He determined that the timetable, for providing education for handicapped children set up under Art. 77, Md. Code, §§ 106D and 106E (requiring adoption of state standards by July 1974, and adoption of local plans 9 months thereafter; implementation of these plans beginning with the 1975 school year, and requiring full implementation within 5 years) was sufficient despite plaintiffs' objection that these steps could be taken more quickly.

The Maryland ARC case holds *inter alia* that:

—Local boards of education must determine that an educational program provided for a child is educational and appropriate for the child.

—Placement in a nonpublic day facility, a public or private residential facility, and home and hospital instruction may (although not necessarily) constitute an appropriate program.

—The local school board cannot discharge their responsibilities simply by referring the child to another agency, if the child is merely placed on a waiting list by the agency.

—State authorities must promulgate standards for the accreditation of all education facilities, including day care centers and residential treatment facilities.

—Home instruction must only be used when the child is prevented by physical conditions from attending school; home instruction will not be justified by mental retardation alone.

—If public agencies place children in private programs, the state or local school board must provide full funding to insure that the program is delievered free of charge to the parents.

—Local boards of education have the obligation to provide daily transportation to and from the educational facility.

On May 30, 1974, a further hearing was held before Judge Raine. At the hearing, attorneys for the state announced that the state would not appeal Judge Raine's decision but instead would commit itself to full compliance with the Decree commencing September, 1975. The state estimated the cost of compliance at $6.6 million per year. The state committed itself to notify the plaintiffs by the end of the calendar year of funds included in the budget for the purpose of compliance. On the strength of those commitments, Judge Raine allowed the State until September, 1975 to comply with provisions in his Decree as to which no time table had been set previously. In addition, Judge Raine reserved jurisdiction to insure that the defendants' commitments are kept.

NEW YORK: *Reid v. Board of Education for the City of New York*, No. 8742 (Commissioner of Education for the State of New York) decided November 26, 1973.

Pursuant to the decision of the Commissioner (reported in "Mental Retardation and the Law," January 1974) the Board submitted a "plan" to implement the order. Plaintiffs evaluated the plan and made a critical submission to the Commissioner asserting deficiencies on the questions of the medical discharge register, placement in public school classes, home instruction and the elimination of waiting lists. The matter is pending before the Commissioner.

NORTH CAROLINA: *Crystal Rene Hamilton v. Dr. J. Iverson Riddle, Superintendent of Western Carolina Center*, Civil Action No. 72-86 (United States District Court, Western District, North Carolina, Charlotte Division) filed May 5, 1972.

No further developments since the January 1974 issue of "Mental Retardation and the Law."

NORTH CAROLINA: *North Carolina Association for Retarded Children, Inc. Jame Auten Moore v. The State of North Carolina Board of Public Education* (United States District Court, Eastern District of North Carolina, Raleigh Division) filed May 18, 1972.

The complaint has been amended to allege a violation of the Rehabilitation Act of 1973, Title 28 U.S.C. § 1343, 42 U.S.C. § 1983 and Title 28 U.S.C. §§ 2201-2202 and P.L. 93-112 of the 93rd Congress.

The United States of America has been added as a party-plaintiff in the action.

Discovery has been extended May 1, 1974. Plaintiff's brief is due June 1, 1974, and defendant's brief is due on June 15, 1974. A pre-trial conference is scheduled for June 24, 1974.

A motion is before the Court to extend time for discovery to August 1, 1974. The filing of the plaintiff's brief is due September 2, 1974, and the filing of the defendant's brief is due September 16, 1974. A pre-trial conference will be held on September 24, 1974.

NORTH DAKOTA: *North Dakota Association for Retarded Children v. Peterson*, Civil No. 1196 (United States District Court, North Dakota District, Southwestern Division) filed November 28, 1972.

Plaintiffs have published notice to the members of the plaintiff class.

WISCONSIN: *Mindy Linda Panitch v. State of Wisconsin*, Civil Action No. 72-C-461 (United States District Court, Wisconsin) filed August 14, 1972.

On February 21, 1974, the three-Judge District issued an order denying plaintiff's motion for a preliminary injunction, denying defendant's motion to dismiss, and dismissing Herbert L. Panitch (Mindy's father) as a plaintiff.

The Court ruled that Chapter 89 of the Laws of Wisconsin became effective on August 9, 1973, and gave plaintiffs most of what they sought in their complaint. However, it did not determine that the case was moot, because it was not yet clear that the statute would be effectively administered to provide education to all handicapped children. Therefore the court decided to stay its hand, to give the State opportunity to implement Chapter 89. The defendants were directed to submit a report on implementation to the court by September 1, 1974. The court, however, retained jurisdiction over the case.

Plaintiffs have also intervened in *Warren v. Nusbaum* (see page 7 *supra*) testing the constitutionality of Chapter 89.

D. RIGHT TO FAIR CLASSIFICATION

CALIFORNIA: *Larry P. v. Riles*, Civil Action No. C-71-2270 (United States District Court, Northern District, California) filed November 18, 1971.

Plaintiffs' motions for expanding the injunctive relief state-wide, for contempt against the San Francisco School District and for further related relief have been pending before the District Court since November 1973.

The city of San Francisco's appeal to the Ninth Circuit was argued on April 8, 1974. No decision has yet been rendered.

LOUISIANA: *Lebanks v. Spears*, Civil Action No. 71-2897 (Eastern District, Louisiana, New Orleans Division).

The consent decree has been reported at 60 Federal Rules Decisions 135 [60 F.R.D. 135 (E.D.La. 1973)]

MASSACHUSETTS: *Stewart v. Philips*, Civil Action No. 70-1199-F (United States District Court, Massachusetts) filed September 14, 1970.

No further developments since the October 1973 issue of "Mental Retardation and the Law."

E. EXCLUSIONARY ZONING

OHIO: *Boyd v. Gateways to Better Living*, Case No. 73-CI-531 (Mahoning County Court of Common Pleas) filed April 18, 1973.

No further developments since "Mental Retardation and the Law," January, 1974.

OHIO: *Driscoll v. Goldberg*, Case No. 72-CI-1248, 73-C.A. 59 (Trial Court, Mahoning County Court of Common Pleas; Appellate Court, Court of Appeals, Seventh District) filed August 15, 1972. Appeal decided, April 9, 1974.

On April 9, 1974, the Ohio Court of Appeals ruled on the appeal by adjoining landowners seeking to set aside a trial court ruling that a group home for mentally retarded children was a permitted use in a single-family zoning district. (See "Mental Retardation and the Law," October 1973, p. 26.)

The Court of Appeals ruled that since zoning ordinances are in "derogation of the common law" they should be strictly construed. The zoning ordinance defines a "family" as a group of people living as a "single housekeeping unit." The trial court found as a fact that the group home would be operated much like a traditional family and that it would function as a single housekeeping unit as opposed to a boarding house, fraternity house, or the like. Under these facts, the Court of Appeals ruled that the group home would come within the definition of family used in the zoning ordinance and would therefore be a permitted use under Ohio law.

WISCONSIN: *Browndale International, Ltd., v. Board of Adjustment*, 60 Wis. 2d 182, 208 N.W. 2d 121 (Wis. 1973) *cert. denied* 94 S. Ct. 1933 (1974).

The United States Supreme Court exercised its discretion not to hear this case, denying the Petition for Certiorari on April 15, 1974.

F. STERILIZATION

ALABAMA: *Katie Relf v. Caspar Weinberger*, Civ No. 1557-73 (United States District Court for the District of Columbia) dismissed October 5, 1973; reinstated October 8, 1973.

Consolidated with *NWRO v. Weinberger*, p. 9, *supra*.

NORTH CAROLINA: *Nial Ruth Cox v. A. M. Stanton, M.D.*, CA 800 (United States District Court, Eastern District, North Carolina) filed July 12, 1973.

In mid-October both sides had filed motions for judgement on the pleadings. On December 3, 1973, the Court entered an order extending the time for filing objections or answers to any and all interrogatories until thirty days after the entry of judgement on these motions. No decision on the motions had yet been rendered.

G. COMMITMENT LAWS

WEST VIRGINA: *State ex rel. Willard Miller v. Robert Jenkins*, No. 13340 (Supreme Court of Appeals of West Virginia at Charleston) filed November 20, 1973. Decided March 19, 1974.

On March 19, 1974, the Supreme Court of Appeals handed down its decision in the case challenging the constitutionality of commitment procedures for those persons found incompetent to stand trial. In granting the petition for habeas corpus, the court ruled, *inter alia*;

> That the state must make the determination of whether a person is competent to stand trial within 60 days of commitment, and that a person may not be confined for more than six months even if he has not become competent within that period.
>
> That a person may not be committed to a mental institution "attendant to a criminal prosecution" unless it has been demonstrated by "clear, cogent, and convincing" that he is "dangerous to himself or others."
>
> That if a person is "so severely retarded that he is unable to stand trial. . . the state must either bring a civil commitment action against [him] or discharge him."

In this case the court ordered that the petitioner be released with sixty days to enable the state to institute civil commitment proceedings if they so desired.

WISCONSIN: *State ex rel. Gerald Haskins v. County Court of Dodge County*, 62 Wis. 2d 250, 214 N.W. 2d 575 (Wis. 1974).

On February 18, 1974, the Wisconsin Supreme Court decided this class action habeas corpus case brought on behalf of persons involuntarily committed as incompetent to stand trial.

The Court fuled that the state may confine a person found incompetent to stand trial for 18 months without violating the U.S. Supreme Court decision in *Jackson v. Indiana* (See "Mental Retardation and the Law," April 1973.)

According to the Court, while the likelihood of regaining competency declines with the length of commitment, there is still a significant, albeit small, probability that persons confined from 12-18 months will become competent. Moreover, under Wisconsin statutory law, persons who are found incompetent to stand trial may be confined no longer than the maximum sentence for the crime charged. The Court reasoned that, although this provision might be unconstitutional under *Jackson*, nevertheless it did reflect the legislative intent to require lengthy commitments of persons incompetent to stand trial. The Court held that a rule permitting commitments of 18 months would reflect the intent of the legislature and would not be inconsistent with *Jackson*.

The Court found further that:

After a person is initially found incompetent to stand trial, he is entitled to hearings every six months on the question of his competency,

The trial court must independently evaluate psychiatric testimony in determining whether a person is competent.

The trial court may not dismiss charges against one who is found unlikely to regain competency in the forseeable future.

The mere fact that one is charged with a crime, even a violent one, does not automatically satisfy the standard of dangerousness required for civil commitment.

The mere fact that one is confined beyond the time when it appears likely that he will become competent does not necessitate the dismissal of charges on the grounds of a denial of speedy trial.

The State Public Defender is now seeking to have the incompetency commitments of the plaintiffs vacated. If the state wishes to continue to confine the plaintiffs, it will be required to initiate civil commitment proceedings.

IV. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

A. RIGHT TO TREATMENT

ILLINOIS: *Rivera v. Weaver*, Civil Action No. 72C135.

MASSACHUSETTS: *Ricci v. Greenblatt*, Civil Action No. 72-469-T (United States District Court, Massachusetts) filed Feb. 7, 1972. Consent Decree entered, Nov. 12, 1973.

B. RIGHT TO JUST COMPENSATION FOR LABOR

MISSOURI: *Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State Missouri*, 93 S. Ct. 1614 (1973).

C. RIGHT TO PUBLIC EDUCATION

CONNECTICUT: *Seth Kivell, P.P.A. v. Dr. Bernard Nemoitan*, 143913, (Superior Court, Fairfield County, Connecticut) Decided July 18, 1972.

MICHIGAN: *Harrison v. State of Michigan*, 350 F. Supp. 846 (E. D. Mich. 1972).

NEW YORK: *Piontkowski v. John Gunning and the Syracuse School District* (filed with the Commissioner of Education for the State of New York on August 4, 1972).

NEW YORK: *In the matter of Peter Held*, Civil Action No. H-2-71, H-10-71 (Family Court of the State of New York, County of Westchester, November 29, 1971).

PENNSYLVANIA: *Pennsylvania Association for Retarded Children, Nancy Beth Bowman v. Commonwealth of Pennsylvania, David H. Kurtzman*, 334 F. Supp. 1257 (3-Judge Court, E.D. Pennsylvania, 1971).

WASHINGTON, D.C.: *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D. D.C. 1972).

D. CUSTODY

IOWA: *In the interest of Joyce McDonald, Melissa McDonald, Children, and the State of Iowa v. David McDonald and Diane McDonald*, Civil Action No. 128/55162 (Iowa Supreme Court, October 18, 1972); and

IOWA: *In the interest of George Franklin Alsager et al. and the State of Iowa v. Mr. and Mrs. Alsager*, Civil Action No. 169/55148 (Supreme Court of Iowa, October 18, 1972).

E. COMMITMENT LAWS

INDIANA: *Jackson v. Indiana*, 406 U.S. 715 (1972).

WISCONSIN: *State ex rel. Matalik v. Schubert*, 57 Wis. 2d 315, 204 N.W. 2d 13 (Wisconsin Supreme Court 1973).

F. EXCLUSIONARY ZONING

CALIFORNIA: *Defoe v. San Francisco Planning Commission*, Civ. No. 30789, (Superior Court of California) filed Aug. 17, 1970.

MICHIGAN: *Doe v. Damm*, Complaint No. 627 (United States District Court, Eastern District, Michigan) Consent Decree.